

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DAVID STEPHENS, SR., DAVID STEPHENS,)
JR., AND ELIZABETH BIERBAUER D/B/A)
LESLIE GAS COMPANY)

CASE NO. 91-010

ALLEGED FAILURE TO COMPLY WITH)
KRS 278.230)

O R D E R

On January 14, 1991, the Commission entered an Order directing David Stephens, Sr., David Stephens, Jr., and Elizabeth Bierbauer d/b/a Leslie Gas Company to show cause at a hearing to be held before the Commission on February 27, 1991 why they should not be subject to the penalties of KRS 278.990 for their failure to comply with KRS 278.230. A copy of the Order was served upon David Stephens, Jr. by certified mail on January 17, 1991 and a copy of the Order was served upon Elizabeth Bierbauer on February 12, 1991 by the Orange County (Florida) Sheriff's Office. A copy of the Order was also served upon David Stephens, Sr. on February 12, 1991 by the Orange County (Florida) Sheriff's Office by leaving a copy at Mr. Stephens' place of residence.

A hearing was conducted before the Commission in accordance with the Order on February 27, 1991. Neither David Stephens, Sr., David Stephens, Jr., or Elizabeth Bierbauer appeared, nor did anyone appear on their behalf.

Now, therefore, based upon the testimony and evidence herein, the Commission makes the following findings of fact, conclusions of law, and Order.

FINDINGS OF FACT

Leslie Gas Company is owned by David Stephens, Sr. and operates facilities used for the production, distribution, and sale of natural gas to the public for compensation. David Stephens, Jr. and Elizabeth Bierbauer are brother and sister and the children of David Stephens, Sr.

On June 23, 1988, Elizabeth Bierbauer advised the Commission by telephone that David Stephens, Sr., by Power of Attorney, had conferred upon her, the authority to operate the utility. Subsequently, forms filed by Leslie Gas Company were signed by Elizabeth Bierbauer as Manager/Trustee. Prior to that date, all forms were submitted and signed by David Stephens, Sr.

On January 2, 1990, two copies of the Commission's Financial and Statistical form ("Annual Report") and two copies of the Intrastate Operating Revenues Report form ("Gross Operating Report") were mailed by the Commission to Elizabeth Bierbauer. A letter of instruction was enclosed with the forms informing Elizabeth Bierbauer that, in accordance with 807 KAR 5:006, Section 3(1) and KRS 278.140, the reports were required to be completed for the calendar year 1989 and filed with the Commission on or before March 31, 1990. Neither report was filed by the due date, and on April 11, 1990, a second letter was sent to Elizabeth Bierbauer directing that the forms be completed and filed by April 30, 1990. The second letter also advised Elizabeth Bierbauer that

penalties could be imposed for failing to comply with the regulation and the statute.

The forms were not filed by April 30, 1990, and between May 14, 1990 and November 12, 1990, numerous telephone calls were made by Commission Staff to Elizabeth Bierbauer and David Stephens, Jr. concerning the reports. In one such conversation, David Stephens, Jr., on July 17, 1990, stated that Elizabeth Bierbauer was going to send him the forms and he would inform the Commission when he received them. On August 13, 1990, David Stephens, Jr. advised the Commission that he had received the forms and requested assistance in completing them. On August 14, 1990, David Stephens, Jr. met with members of the Commission Staff who assisted him in filling out the forms. However, additional information was required from Elizabeth Bierbauer before the forms could be completed and she was requested to send the information by both David Stephens, Jr. and the Commission. Despite numerous requests for the information to Elizabeth Bierbauer, the information has never been received.

Leslie Gas Company has a long history of failing to timely file its Annual Report and Gross Operating Report. During the preceding 6 years, Leslie Gas Company has failed to file the reports by the date they were due. Leslie Gas Company has not filed its Annual Report since 1987.

CONCLUSIONS OF LAW

Leslie Gas Company is a "utility" as defined by KRS 278.010(3)(b). As such, Leslie Gas Company is subject to regulation by this Commission by KRS 278.040 and is required by

KRS 278.230(3) to file any reports, schedules, classifications, or other information reasonably required by the Commission.

KRS 278.140 requires each utility to file an Annual Report of its gross earnings for the preceding calendar year. The purpose of this report is to ascertain the amount that the utility shall be assessed, pursuant to KRS 278.140, for its share of the expenses in maintaining the Commission. The Gross Operating Report is due on March 31 of each year and contains the gross earnings derived from intrastate business for the preceding calendar year.

In addition, each utility is required by 807 KAR 5:006 to file a financial and statistical report annually upon forms furnished by the Commission. This report is also due on March 31 of each year.

KRS 278.990 provides that any officer, agent, or employee of a utility who willfully violates any provisions of KRS Chapter 278 or who fails to obey any Order of the Commission upon which all rights of appeal have been exhausted shall be subject to a civil penalty not to exceed \$2,500 for each offense. By failing to file the Annual Report required by 807 KAR 5:006, Section 3(1), and by the repeated failure to furnish to the Commission or David Stephens, Jr. the information necessary to complete those reports, Elizabeth Bierbauer, as an officer, agent, or employee of Leslie Gas Company, has willfully violated the provisions of KRS Chapter 278 and is individually subject to the penalties prescribed in KRS 278.990(1). For such violation, Elizabeth Bierbauer should be

assessed a penalty of \$500, provided that upon filing of the past due reports within 60 days, the penalty should be vacated.

ORDER

Now, therefore, upon the foregoing findings of fact, conclusions of law, and upon the entire record,

IT IS HEREBY ORDERED that:

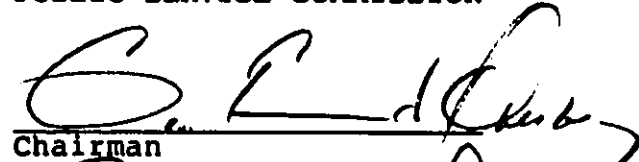
1. Elizabeth Bierbauer, as an officer, agent, and employee of Leslie Gas Company, willfully violated the provisions of KRS 278.230(3) and 807 KAR 5:006, Section 3(1), by failing to file the company's Annual Report when due, and for such failure Elizabeth Bierbauer, in her individual capacity, is hereby assessed a penalty of \$500.

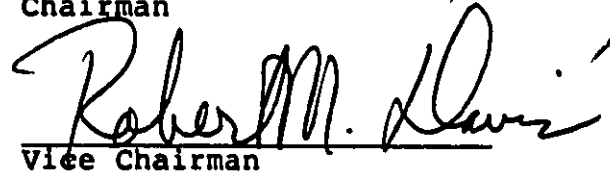
2. The penalty shall be vacated if the Annual Reports for 1988, 1989 and 1990 are filed within 60 days from the date of this Order.

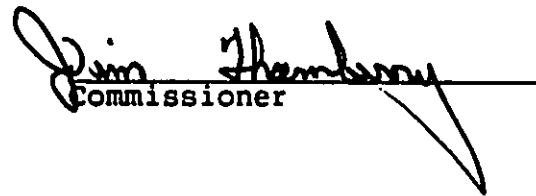
3. Upon the expiration of 60 days from the date of this Order, if the Annual Reports are not filed, the penalty shall become immediately due and payable and shall be paid by certified check or money order made payable to "Treasurer, Commonwealth of Kentucky." Said check or money order shall be delivered to the Office of General Counsel, Public Service Commission of Kentucky, P. O. Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 9th day of April, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director